

# **BROOKINGS COUNTY COMMISSION MEETING**

**Tuesday, May 29, 2007**

The Brookings County Board of County Commissioners met in regular session on Tuesday, May 29, 2007 with the following members present: Mary Negstad, Dennis Falken, Don Larson, Deanna Santema, and Emil Klavetter.

## **CALL TO ORDER**

Chairperson Klavetter called the meeting to order.

## **PLEDGE OF ALLEGIANCE**

The Pledge of Allegiance was recited.

## **CONSENT AGENDA**

Chairperson Klavetter declared the Consent Agenda approved with no objection from the board. The Consent Agenda consisted of the agenda for the May 29, 2007 Commission Meeting.

Motion by Larson, seconded by Negstad, to amend the minutes from Tuesday, May 22, 2007 for clarification purposes. Roll Call Vote: Larson "Aye," Negstad "Aye," Santema "Aye," Klavetter "Aye." Motion Carried. Falken abstained from voting as he was not present at the May 22, 2007 Brookings County Commission meeting.

Travel/Education: Joyce Dragseth, Chris Lilla, Larry Klingbile, Matt Archer, and Erik Markve to attend Annual Assessor's School in Pierre on September 30 - October 5; Joyce Dragseth to attend USPAP workshop in Huron on August 22.

## **ROUTINE BUSINESS**

Motion by Falken, seconded by Santema, to approve an Automatic Supplement to the Brookings County Sheriff's Office in the amount of \$2,325.16 for liability insurance reimbursement for damage done to a patrol car by a tree branch during a storm; Receipt #100023; Line #10100x4250211. Roll Call Vote: Negstad "Aye," Santema "Aye," Falken "Aye," Larson "Aye," Klavetter "Aye." Motion Carried.

## **REGULAR BUSINESS**

Motion by Santema, seconded by Negstad, to approve and authorize Chairperson Klavetter to sign Resolution #07-17; A Resolution adopting the revised Official Zoning Map. Roll Call Vote: Santema "Aye," Falken "Aye," Larson "Aye," Negstad "Aye," Klavetter "Aye." Motion Carried.

RESOLUTION NO. 07-17

A RESOLUTION ADOPTING REVISED OFFICIAL ZONING MAP

WHEREAS, it is necessary to replace the existing Official Zoning Map;

THEREFORE BE IT RESOLVED, that the Brookings County Official Zoning Map dated May 29, 2007 is hereby adopted as the Official Zoning Map for the County and such revised Official Zoning Map supersedes all prior Zoning Maps for the County.

Adopted this 29<sup>th</sup>, day of May, 2007

---

Emil Klavetter, Chairman  
Brookings County Board of County  
Commissioners

ATTEST:

---

Janet K. Willmott  
Brookings County Auditor

Director of Equalization, Joyce Dragseth, and GIS Coordinator, Jim Hagedorn, presented the Board with a demonstration of the GIS Internal Website.

Motion by Negstad, seconded by Falken, to approve and authorize Chairperson Klavetter to sign Resolution #07-18; A Final Resolution approving the issuance of the Brookings County Economic Development Revenue Bonds (SDSU Foundation Project) to be issued in the aggregate principal amount of \$10,000,000.00. Roll Call Vote: Falken "Aye," Larson "Aye," Negstad "Aye," Santema "Aye," Klavetter "Aye." Motion Carried.

#### RESOLUTION NO. 07-18

FINAL RESOLUTION APPROVING THE ISSUANCE OF THE BROOKINGS COUNTY ECONOMIC DEVELOPMENT REVENUE BONDS (SDSU FOUNDATION PROJECT) TO BE ISSUED IN THE AGGREGATE PRINCIPAL AMOUNT OF \$10,000,000.

WHEREAS, the purpose of Chapter 9-54 of the South Dakota Codified Laws (the "Act") as found and determined by the legislature is to promote the general economic welfare and prosperity of the State of South Dakota (the "State") which includes the power to issue bonds to pay outstanding indebtedness and to pay the costs incurred for the remodeling, enlargement and construction of new facilities of a non-profit corporation organized and existing under the laws of the State of South Dakota; and

WHEREAS, the County has received from South Dakota State University Foundation, a nonprofit corporation organized and existing under the laws of South Dakota (the "Foundation"), a proposal that the County undertake to finance such a Project (as hereinafter described) through the issuance of up to \$10,000,000.00 in revenue bonds (the "Bonds") pursuant to the Act for use by the Foundation; and

WHEREAS, the proceeds from the issuance of the Bonds will be loaned to the Foundation, and used by the Foundation to pay the costs of issuance of the Bonds and to construct, equip and furnish (i) an Equestrian Building, (ii) Dairy Manufacturing Facility, (iii) Engineering Building, (iv) the Wintrode Success Center and (v) Seed Technology Center and related facilities to be located on the campus

of South Dakota State University, located in Brookings, South Dakota (collectively referred to herein as the "Project"); and

WHEREAS, the County Commissioners, on February 20, 2007, gave preliminary approval to the issuance of the Bonds and the use thereof to finance the Project; and

WHEREAS, the County Commission held a public hearing on March 13, 2007 with respect to the proposed financing of the Project and the issuance of the Bonds, and a second meeting is scheduled for June 19, 2007 with respect to the Project (the "Public Hearing"); and

WHEREAS, it is necessary to authorize the execution and delivery of a Loan and Security Agreement (the "Loan Agreement") between the County and the Foundation to provide for the application of the proceeds of the sale of the Bonds and the repayment of the Bonds; and

WHEREAS, it is necessary to authorize the execution and delivery of a Tax Exemption Certificate and Agreement (the "Tax Agreement") among the County, the Foundation and Wells Fargo Bank, as Purchaser of the Bonds; and

WHEREAS, forms of the following documents relating to the Bond and the Project have been submitted to and examined by the County Commissioners and are on file in the office of the County Auditor: (a) Loan Agreement; (b) the Bonds; (c) the Promissory Notes issued by the Foundation to the County evidencing the Foundation's obligations to repay the County the original principal amount of \$10,000,000 (the "Series 2007 Notes"); and (d) such other documents as may be referenced therein to be executed and delivered in connection with the purchase and sale of the Bonds.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COMMISSIONERS OF BROOKINGS COUNTY, SOUTH DAKOTA AS FOLLOWS:

*Section 1. Authorization of Bonds and Loan Agreement; Findings.* In order to finance the Project, the Bonds are hereby authorized and ordered to be issued by the County pursuant to the Loan Agreement. The County Commission hereby finds that the Project constitutes a "Project" within the meaning of the Act. The County Commission further finds, determines and declares as follows:

(a) The Project will promote the welfare of the County as provided in Section 9-54 of the Act, and the issuance of the Bonds in the aggregate principal amount not to exceed \$10,000,000 to finance the Project will serve the purposes and in all respects conform to the provisions and requirements of the Act;

(b) Neither the Project, the Bonds, nor any document or agreement entered into by the County in connection therewith will be general obligations of the County nor shall they be payable in any manner by taxation; and

(c) The Loan Agreement is a "Revenue Agreement" within the meaning of Section 9-54-3.1 of the Act which unconditionally obligates the Foundation to pay (i) amounts sufficient at all times to pay when due the principal of, premium, if any, and interest on the Bonds; (ii) all taxes, special assessments and other governmental charges levied or imposed with respect to the Project; and (iii) all costs of insurance, operation and maintenance thereof.

The Bonds are authorized to be issued in an aggregate principal amount not to exceed \$10,000,000, shall mature on the dates provided in the Loan Agreement, and shall bear interest at a variable rate or rates provided for and calculated in accordance with the conditions set forth in the Loan Agreement, the provisions of which are incorporated in and made a part of this Resolution. The

Bonds shall be in fully-registered form, shall be payable at the times, places, manner and from the sources, shall be executed by the manual or facsimile signature of its Chairman and attested by the manual or facsimile signature of the County Auditor and shall contain such provisions, all as provided in the Loan Agreement, as executed and delivered. The official seal of the County shall be impressed, or a facsimile of such seal shall be imprinted on the Bonds. The Chairman of the County Commission (the "Chairman") and the County Auditor are hereby authorized and directed to execute and deliver the Loan Agreement in substantially the same form as the Loan Agreement now before the County Commission and containing substantially the terms and provisions set forth therein with such insertions, deletions, changes, omissions and variations as the Chairman may deem appropriate (such approval by the Chairman of any such changes shall be conclusively established by the execution of the Loan Agreement by the Chairman).

*Section 2. Sale of the Series 2007 Bonds; Bond Purchase Agreement.* The County does hereby authorize the sale of the Series 2007 Bonds to Wells Fargo Bank, N.A. (the "Purchaser"), such Bonds to be in the aggregate principal amount not to exceed \$10,000,000, to bear interest and to mature as set forth in the Loan Agreement, at a purchase price of not less than 100% of the principal amount plus accrued interest. The County does hereby authorize and approve the execution and delivery of a Bond Purchase Agreement dated as of the date of the issuance and sale of the Bonds (the "Bond Purchase Agreement") between the County, the Foundation and the Purchaser; such Bond Purchase Agreement to be substantially in the form and content of the draft thereof on file with the County, and is hereby approved, with such changes therein as shall be approved by the Chairman or the County Auditor, with the advice of the County Attorney, and the execution thereof shall constitute conclusive evidence of their approval and the County's approval of any changes or revisions therein from the form of Bond Purchase Agreement approved hereby.

*Section 3. Authorization of Tax Agreement.* The Chairman and the County Auditor are hereby authorized and directed to execute and deliver the Tax Agreement in substantially the same form as the Tax Agreement now before the County Commission and containing substantially the terms and provisions set forth therein with such insertions, deletions, changes, omissions and variations as the Chairman may deem appropriate (such approval by the Chairman of any such changes shall be conclusively established by the execution of the Tax Agreement by the Chairman).

*Section 4. Note.* Pursuant to the Loan Agreement, the Company will issue to the County its Series 2007 Notes, each dated as of the date of the issuance and sale of the Bonds to evidence its obligation under the Loan Agreement, which Series 2007 Notes will be assigned to the Purchaser as security for the Bonds. The Series 2007 Notes will be in a principal amount not less than the principal amount of the Bonds and have similar prepayment provisions, maturities and interest rates as the Bonds. The County hereby approves the assignment of the Series 2007 Note by the County to the Purchaser for the benefit and security of the Bonds.

*Section 5. Limited Obligations.* The Bonds, together with the interest thereon, shall be limited obligations of the County payable solely out of the payments, revenues and receipts received by the County pursuant to the Loan Agreement and Series 2007 Notes, which payments, revenues and receipts are hereby and in the Loan Agreement pledged and assigned for the payment of the Bonds and shall be used for no other purpose than to pay the principal of and interest on the Bonds, except as may be otherwise expressly authorized in the Loan Agreement. The Bonds and the interest thereon shall not constitute an indebtedness of the County within the meaning of any constitutional provision or statutory limitation and shall not constitute or give rise to a pecuniary liability of the County or its officers, agents or employees, or a charge against the County's general credit or taxing power. The County Commissioners further find and determine that, pursuant to the Act, the Bond is

to be authorized, issued and sold in accordance with Chapter 6-8B, except that no election is required and that all limitations imposed upon the issuance of the Bond have been met.

*Section 6. No Continuing Disclosure Undertaking.* The Commission hereby finds that the Bonds are exempt from continuing disclosure requirements of Rule 15c2-12 of the Securities and Exchange Commission. Consequently, the County is not covenanting to provide and will not provide annual financial information, notices of certain material events or any other disclosure or information which would otherwise be required by that Rule.

*Section 7. Severability; Exhibits on File.* If any section, paragraph, clause or provision of this Resolution shall be held invalid, the invalidity of such section, paragraph, clause or provision shall not affect any of the other provisions of this Resolution. All other documents herein referred to and made a part of this Resolution shall be maintained on file in the office of the County Finance Officer and are available for inspection by any interested party during normal business hours. All terms used but not otherwise defined herein shall have the same meanings in this Resolution as provided for in the Loan Agreement.

*Section 8. Amendments.* Any other provision of this Resolution to the contrary notwithstanding, however, any modifications to the Loan Agreement, Bond, Mortgage, Series 2007 Note, Tax Exemption Agreement (collectively referred to herein as the "Transaction Documents"), or any other document or agreement referenced therein, shall contain the terms and provisions substantially set forth in the documents on file, but with all such changes therein, not inconsistent with the Act or other law, as may be approved by the officers executing the same, which approval shall be conclusively evidenced by the execution thereof. All other amendments to the Transaction Documents shall be made in the manner set forth therein.

*Section 9. Approval.* Subject to the contingency set forth in Section 13, this Resolution constitutes the public approval of the plan of financing of the Project required by Section 147(f) of the Code.

*Section 10. Additional Authority.* Each of the Chairman, County Auditor or any other officer or official of the County is hereby authorized and directed to execute any and all documents and do any and all things deemed necessary in order to effect the issuance and sale of the Bonds, the execution and delivery of the Loan Agreement, the Tax Agreement, the financing of the Project and to carry out the intent and purposes of this Resolution. In the absence of the Chairman for any reason, the acting Chairman is authorized to execute and deliver all documents referred to in this Resolution to be executed and delivered by the Chairman, and in the absence of the County Auditor for any reason, the acting County Auditor is authorized to execute and deliver all documents referred to in this Resolution to be executed and delivered by the County Auditor. In addition, the County Auditor, the Chairman and other officers of the County are authorized and directed to prepare and furnish to Boyce, Greenfield, Pashby & Welk, LLP, bond counsel, certified copies of all proceedings and records of the County relating to the Project and the Bond and such other affidavits and certificates as may be required to show the facts appearing from the books and records in the officers' custody and control or as otherwise known to them, and all such certified copies, certificates and affidavits, including any heretofore furnished, shall constitute representations of the County as to the truth of all statements contained therein.

*Section 11. No Interest; Commissions.* No member of the County Commissioners (i) has a direct or indirect interest in the Project, the Loan Agreement or the Bond, (ii) owns any interest in the Project or the Foundation, (iii) is an officer, director or employee of the Foundation, (iv) was or will be involved in supervising the completion of the Project on behalf of the Foundation, or (v) has received or will receive any commission, bonus or other remuneration for or in respect of the Project, the Loan

Agreement or the Bond. Notwithstanding the foregoing, the Foundation is obligated to reimburse the County for all costs, including legal fees, incurred by the County with respect to the issuance and sale of the Bonds in connection with the Project.

*Section 12. Bond; Registration of Bonds.* The County Auditor, as bond registrar, shall keep a bond register in which the County shall provide for the registration of the Bond and for transfers of the Bond. The principal and interest on the Bond shall be paid to the registered owner thereof as provided in the Bond. The Bond shall be transferable by the registered owner of the bond register of the County, upon presentation of the Bond for notation of such transfer thereon at the office of the County Auditor, as bond registrar, accompanied by a written instrument of transfer in form satisfactory to the County Auditor duly executed by the registered owner or its attorney duly authorized in writing. The person in whose name the Bond shall be issued or, if transferred, shall be registered from time to time shall be deemed and regarded as the absolute owner and Holder thereof for all purposes and payment of or on account of the principal on the Bond shall be made only to the registered owner thereof, or its attorney duly authorized in writing, and neither the County, the County Auditor or the Foundation shall be affected by any notice to the contrary.

*Section 13. Resolution Effective.* This Resolution shall take effect following (i) the 20th day following its publication unless suspended by a referendum, and (ii) the holding of the Public Hearing with results satisfactory to the County.

Dated at Brookings, South Dakota this 29<sup>th</sup> day of May, 2007.

---

Emil Klavettter, Chairman  
Brookings County Commission

ATTEST:

---

Janet K. Willmott  
County Auditor  
[SEAL]

Motion by Santema, seconded by Falken, to approve Resolution #07-18 to be published separately as amended. Roll Call Vote: Larson "Aye," Negstad "Aye," Santema "Aye," Falken "Aye," Klavetter "Aye." Motion Carried.

Commission Assistant/Human Resources Director, Stephanie Vogel met with the board to discuss Personnel Action Notices and correspondence received regarding the Regional Infant and Child Mortality Review Committee's 2006 findings, the STIP Review meeting on June 28<sup>th</sup> in Watertown from the First District Association of Local Governments Office, an Argus Leader article from Deanna Santema, and the NACo's 2007 Annual Conference and Exposition Workshop.

Deputy States Attorney, Wm. Mark Kratochvil had nothing to report.

#### **COMMISSIONER'S OPEN DISCUSSION**

Commissioner Negstad had nothing to report.

Commissioner Larson had nothing to report.

Commissioner Falken reported on the Avera Luncheon on Thursday, May 24, 2007.

Commissioner Santema reported on the Avera Luncheon and the ECMH meeting, both on Thursday, May 24, 2007.

Chairperson Klavetter had nothing to report.

## **ADJOURNMENT**

There being no further business, Chairperson Klavetter declared the meeting adjourned until 8:30am Tuesday, June 5, 2007.

It is the policy of Brookings County, South Dakota, not to discriminate against the Handicapped in Employment or the Provision of Service. The County of Brookings is responsive to requests for communication aids and the need to provide appropriate access, and will provide alternative formats and accessible locations consistent with the Americans with Disabilities Act.

---

Christine L'Amour  
Office Assistant  
Brookings County Auditor's Office